

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

TCH LLC, a California Limited
Liability Company

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of TCH LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

2. Defendant TCH LLC owned Pho Nation Express located at or about 2353 Santa Clara Ave, Alameda, California, in May 2021.

3. Defendant TCH LLC owns Pho Nation Express ("Restaurant") located at or about 2353 Santa Clara Ave, Alameda, California, currently.

1 4. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of,
4 and alleges a joint venture and common enterprise by all such Defendants.
5 Plaintiff is informed and believes that each of the Defendants herein is
6 responsible in some capacity for the events herein alleged, or is a necessary
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
8 the true names, capacities, connections, and responsibilities of the Defendants
9 are ascertained.

10
11 **JURISDICTION & VENUE:**

12 5. The Court has subject matter jurisdiction over the action pursuant to 28
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15 6. Pursuant to supplemental jurisdiction, an attendant and related cause
16 of action, arising from the same nucleus of operative facts and arising out of
17 the same transactions, is also brought under California's Unruh Civil Rights
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
20 founded on the fact that the real property which is the subject of this action is
21 located in this district and that Plaintiff's cause of action arose in this district.

22
23 **FACTUAL ALLEGATIONS:**

24 8. Plaintiff went to the Restaurant in May 2021 with the intention to avail
25 himself of its goods or services motivated in part to determine if the
26 defendants comply with the disability access laws. Not only did Plaintiff
27 personally encounter the unlawful barriers in May 2021, but he wanted to
28 return and patronize the business several times but was specifically deterred

1 due to his actual personal knowledge of the barriers gleaned from his
2 encounter with them.

3 9. The Restaurant is a facility open to the public, a place of public
4 accommodation, and a business establishment.

5 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
6 to provide wheelchair accessible outside dining surfaces in conformance with
7 the ADA Standards as it relates to wheelchair users like the plaintiff.

8 11. The Restaurant provides dining surfaces to its customers but fails to
9 provide any wheelchair accessible outside dining surfaces.

10 12. One problem that plaintiff encountered was the lack of sufficient knee
11 or toe clearance under the outside dining surfaces for wheelchair users.

12 13. Plaintiff believes that there are other features of the dining surfaces that
13 likely fail to comply with the ADA Standards and seeks to have fully compliant
14 dining surfaces available for wheelchair users.

15 14. On information and belief, the defendants currently fail to provide
16 wheelchair accessible dining surfaces.

17 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
18 personally encountered these barriers.

19 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
20 wheelchair accessible facilities. By failing to provide accessible facilities, the
21 defendants denied the plaintiff full and equal access.

22 17. The failure to provide accessible facilities created difficulty and
23 discomfort for the Plaintiff.

24 18. The defendants have failed to maintain in working and useable
25 conditions those features required to provide ready access to persons with
26 disabilities.

27 19. The barriers identified above are easily removed without much
28 difficulty or expense. They are the types of barriers identified by the

1 Department of Justice as presumably readily achievable to remove and, in fact,
2 these barriers are readily achievable to remove. Moreover, there are numerous
3 alternative accommodations that could be made to provide a greater level of
4 access if complete removal were not achievable.

5 20. Plaintiff will return to the Restaurant to avail himself of its goods or
6 services and to determine compliance with the disability access laws once it is
7 represented to him that the Restaurant and its facilities are accessible. Plaintiff
8 is currently deterred from doing so because of his knowledge of the existing
9 barriers and his uncertainty about the existence of yet other barriers on the
10 site. If the barriers are not removed, the plaintiff will face unlawful and
11 discriminatory barriers again.

12 21. Given the obvious and blatant nature of the barriers and violations
13 alleged herein, the plaintiff alleges, on information and belief, that there are
14 other violations and barriers on the site that relate to his disability. Plaintiff will
15 amend the complaint, to provide proper notice regarding the scope of this
16 lawsuit, once he conducts a site inspection. However, please be on notice that
17 the plaintiff seeks to have all barriers related to his disability remedied. See
18 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
19 encounters one barrier at a site, he can sue to have all barriers that relate to his
20 disability removed regardless of whether he personally encountered them).

21
22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
23 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
24 Defendants.) (42 U.S.C. section 12101, et seq.)

25 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint.

28 23. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any
 2 place of public accommodation is offered on a full and equal basis by anyone
 3 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 4 § 12182(a). Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,
 6 or procedures, when such modifications are necessary to afford
 7 goods, services, facilities, privileges, advantages, or
 8 accommodations to individuals with disabilities, unless the
 9 accommodation would work a fundamental alteration of those
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 13 defined by reference to the ADA Standards.
- 14 c. A failure to make alterations in such a manner that, to the
 15 maximum extent feasible, the altered portions of the facility are
 16 readily accessible to and usable by individuals with disabilities,
 17 including individuals who use wheelchairs or to ensure that, to the
 18 maximum extent feasible, the path of travel to the altered area and
 19 the bathrooms, telephones, and drinking fountains serving the
 20 altered area, are readily accessible to and usable by individuals
 21 with disabilities. 42 U.S.C. § 12183(a)(2).

22 24. When a business provides dining surfaces, it must provide accessible
 23 dining surfaces.

24 25. Here, accessible dining surfaces have not been provided in
 25 conformance with the ADA Standards.

26 26. The Safe Harbor provisions of the 2010 Standards are not applicable
 27 here because the conditions challenged in this lawsuit do not comply with the
 28 1991 Standards.

1 27. A public accommodation must maintain in operable working condition
2 those features of its facilities and equipment that are required to be readily
3 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

4 28. Here, the failure to ensure that the accessible facilities were available
5 and ready to be used by the plaintiff is a violation of the law.

6
7 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
8 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
9 Code § 51-53.)

10 29. Plaintiff repleads and incorporates by reference, as if fully set forth
11 again herein, the allegations contained in all prior paragraphs of this
12 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
13 that persons with disabilities are entitled to full and equal accommodations,
14 advantages, facilities, privileges, or services in all business establishment of
15 every kind whatsoever within the jurisdiction of the State of California. Cal.
16 Civ. Code § 51(b).

17 30. The Unruh Act provides that a violation of the ADA is a violation of the
18 Unruh Act. Cal. Civ. Code, § 51(f).

19 31. Defendants’ acts and omissions, as herein alleged, have violated the
20 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
21 rights to full and equal use of the accommodations, advantages, facilities,
22 privileges, or services offered.

23 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
24 discomfort or embarrassment for the plaintiff, the defendants are also each
25 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
26 (c).)

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: June 11, 2021

CENTER FOR DISABILITY ACCESS

By: 

Amanda Seabock, Esq.
Attorney for plaintiff